APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY

The Hon. Norman RYP **Part 99**

Index no. 29446-92

Motion Sec. no. 09

CROSS-MOTION

Plaintiffs' motion to file a late notice of claim and defendants' CPCR 3211 cross-motions to dismiss are consolidated for determination.

This action originated in the United States District Court, Southern District of New York, where the Hon Robert J. Ward dismissed all federal claims on Dec. 6, 1991. This dismissal was affirmed by the United States Court of Appeals for the Second Circuit on May 8, 1992. Plaintiffs then commenced the herein action on Dec. 24, 1992. Defendants now cross-move to dismiss as time barred.. Where an action is dismissed by a federal court on non-meritorious grounds (or procedural grounds-federal issues notice?) as herein, the plaintiff has six months to recommence the action in State Court (CPLR 205(a)) In this instance the action was dismissed on Dec. 6, 1991, said dismissal was affirmed by The U.S. Court of Appeals, 2nd Cir., on May 8, 1992. However, plaintiffs did not recommence this action until December 24, 1992, more than one (1) year after the original dismissal and seven (7) and one half months after the affirmance of said dismissal. Accordingly, the Summons and Complaint is dismissed. Plaintiffs application to file a late notice of claim is denied as moot.

so ordered.

NORMAN RYP

Entered: Feb. 19, 1997